

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DENNIS TOMOSON,

Petitioner,

v.

RICHARD MORGAN, ELDON VAIL,
ANNE ADAMS, MARGE LITRELL,
and ROBERT PIVER,

Respondents.

NO. CV-05-0112-MWL

ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge Leavitt filed a Report and Recommendation on November 14, 2005, recommending that Plaintiff's request for a temporary injunction forbidding the weekend closure of the Airway Heights Correctional Center law library (Ct. Rec. 54) be DENIED. (Ct. Rec. 57).

On November 23, 2005, Plaintiff filed timely objections to the Report and Recommendation. (Ct. Rec. 60). Plaintiff's objection asserts that justice requires reasonable law library access to enable him to present his legal issues to the Court. (Ct. Rec. 60, pp. 3-5). Plaintiff argues that his lack of legal training, coupled with the current limited law library access, establishes he has

1 suffered an "actual injury" demonstrating a violation of his right
2 of access to the courts. (Ct. Rec. 60, pp. 1-2).

3 Plaintiff acknowledges that he currently has access to the
4 prison library. Plaintiff's objection states that he does in fact
5 have the ability to use the law library during the week for at least
6 three hours and up to nearly 13 hours should his request for
7 extended access be approved.¹ (Ct. Rec. 54, 60). Based on the
8 foregoing, it appears that Plaintiff's access to the law library is
9 not inadequate. Plaintiff has thus failed to demonstrate that his
10 access to the law library has caused an "actual injury," as required
11 by *Lewis v. Casey*.

12 Furthermore, as noted in the November 14, 2005, Report and
13 Recommendation, the Court is unable to issue any order against
14 individuals who are not parties to a suit pending before it. *Zenith*
15 *Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969). In
16 this case, Plaintiff seeks damages for alleged violations of his due
17 process and equal protection rights, as well as for retaliation, and
18 names as defendants Richard Morgan, Eldon Vail, Anne Adams, Marge
19 Littrell and Robert Piver. (Ct. Rec. 1). Plaintiff's current
20 motion, however, seeks to enjoin Superintendent Miller-Stout, an
21 unnamed party, from implementing a change to policy that would
22 impact Plaintiff's law library access. (Ct. Rec. 54). Accordingly,
23 Plaintiff's motion fails to link any alleged conduct or harm to any
24 of the named parties in this action. In addition, Plaintiff's
25

26 ¹ As previously indicated by Defendants, Plaintiff may
27 request "emergency/extended law library access when he has pending
28 court or statutory deadlines," Plaintiff has used such access in
the past and is therefore aware of this option, and, with the
approval of emergency/extended access, Plaintiff would have
additional access to pursue his claim. (Ct. Rec. 55, p. 2).

1 complaint neither contains a cause of action for similar injunctive
2 relief nor contains claims relating to the same or similar issues.
3 Since the complaint in this case does not contain allegations
4 raising issues similar to those presented in the instant motion,
5 there is no controversy present with respect to such issues. Absent
6 such a case or controversy, the Court has no jurisdiction to hear
7 the matter. *Rivera v. Freeman*, 469 F.2d 1159, 1162-1163 (9th Cir.
8 1972).

9 Having reviewed the November 14, 2005 Report and Recommendation
10 (Ct. Rec. 57) and Plaintiff's objections to the Report and
11 Recommendation (Ct. Rec. 60), said Report and Recommendation is
12 **ADOPTED** in its entirety.

13 **IT IS ORDERED** that Plaintiff's request for a temporary
14 injunction forbidding the weekend closure of the Airway Heights
15 Correctional Center law library (Ct. Rec. 54) is **DENIED**.

16 **IT IS SO ORDERED.** The District Court Executive shall forward
17 a copy of this order to Plaintiff and counsel.

18 **DATED** this 20th day of December, 2005.

19
20 S/Edward F. Shea
EDWARD F. SHEA
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28